S.B. CIVIL WRIT PETITION NO.7186/2007

Jagdish Prasad Sadh.
vs.
Addl. District Judge (FT) No.2, Jodhpur and ors.

Date : 6.11.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.VD Gaur, for the petitioner.
Mr.ML Chhangani, for the respondents.

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Heard learned counsel for the parties.

The petitioner/defendant is aggrieved against the order dated 27.8.2007 by which the trial court rejected the petitioner's objection about taking on record the original document – certificate of passing of Kovid Pariksha.

According to learned counsel for the petitioner, the plaintiff is required to submit his all documents which were in his possession along with the plaint or at the most before framing of the issues. Thereafter, no document can be produced by the plaintiff without the leave of the Court as provided under Order 7 Rule 14(3) CPC. It is submitted that in the trial court, when

the document was produced by the side of the plaintiff, objection was raised by the petitioner and at that time, it was stated that the document was produced by the witness and, therefore, the provision of Order 7 Rule 14(3) CPC had no application. Believing this stand of the plaintiff, the trial court allowed the production of document Annex.1 in evidence. The petitioner has challenged this order dated 27.8.2007 in this writ petition.

The plaintiff submitted reply to the writ petition and stated that the document was already produced and original is sought to be produced and exhibited through witness and, therefore, the document has not been produced by the witness and, therefore, the provisions of Order 16 Rule 6 CPC has no application.

Learned counsel for the petitioner submitted that the document is in relation to the crucial issue about the age of the person concerned in a suit where the issue of adoption is involved. Therefore, the petitioner is being deprived from cross examination of various plaintiff's witnesses on this document by producing the original at such a belated stage.

Learned counsel for the respondents vehemently submitted that the plaintiff submitted the copy of the document already on record in the trial court before framing of the issues. The document was not traceable, therefore, the original was not produced. In the trial court, the document was produced by the plaintiff along with the requisite list of documents as required by Rule 36. It is also submitted that the original document is tendered in evidence through the son in law of Ganesh Dan and, therefore, even if there is a doubt about the genuineness of the document, then that can also be looked by the court below after evidence of the parties.

I considered the submissions of learned counsel for the parties and perused the facts of the case.

It appears that there is a procedural mistake and the copy of the document was already on record and the original has been sought to be produced by the plaintiff at the time when his evidence was going on. In the trial court, it might have been stated that the document is produced by the witness. Be it as it may be, I do not find that there is any jurisdictional error.

So far as the judgment of the Jharkhand High Court delivered in the case of Satya Narayan Agiwal and another vs. State Bank of India and others reported in 2005 AIHC 4321 is concerned, it has been held that filing of the original document and non-compliance of the provisions of Order 17 Rule 14 CPC, then the Court should insist on the production of the original document by the plaintiff along with the plaint and take note of the fact that the production of photocopy of order would not amount to said compliance. Learned counsel for the petitioner relied on another judgment of the Hon'ble Supreme Court delivered in the case of Smt. J. Yashoda vs. Smt. K. Shobha Rani reported in AIR 2007 SC 1721, which is about admissibility of the document as secondary evidence. The Hon'ble Supreme Court held that the conditions of Section 65(a) of the Evidence Act has not been satisfied. The document cannot be accepted as secondary evidence.

The aforesaid judgments have no application to the facts of the present case because of the reason that copy of document was already on the record and the original is sought to be produced in the evidence of the witness and the original could have been in possession of the plaintiff.

In view of the above, I do not find any reason to interfere in the impugned order.

However, it is made clear that all the objections of the petitioner about the document, its coming from the hands of the witness and its production after the evidence of the defendants and it being exhibited through witnesses, may be considered by the court below while deciding the issue on merits and with respect to the issue itself.

In view of the above, this writ petition having no force, is hereby dismissed with the aforesaid liberty.

(PRAKASH TATIA), J.

S.Phophaliya